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January 6, 2010

The Honorable Charles Terreni  
Chief Clerk of the Commission  
Public Service Commission of South Carolina  
Post Office Drawer 11649  
Columbia, South Carolina 29211

Re: BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T South  
Carolina, Complainant/Petitioner v. Tennessee Telephone Service, LLC d/b/a  
Freedom Communications USA, LLC,  
Defendant/Respondent  
Docket No. 2010-

Dear Mr. Terreni:

Enclosed for filing is AT&T South Carolina's Complaint and Petition for Relief in the  
above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of this pleading as  
indicated on the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink that reads "Patrick W. Turner". The signature is written in a cursive, flowing style.

Patrick W. Turner

PWT/nml  
Enclosure  
cc: All Parties of Record  
766135

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

In the Matter of: BellSouth	)	
Telecommunications, Inc. d/b/a AT&T	)	Docket No. 2010-____-C
Southeast d/b/a AT&T South Carolina vs.	)	
Tennessee Telephone Service, Inc. d/b/a	)	
Freedom Communications USA, LLC		

**AT&T SOUTH CAROLINA’S COMPLAINT AND  
PETITION FOR RELIEF**

Pursuant to S.C. Code Ann. §§ 58-9-1080 and -1120, S.C. Code Regs. §103-824 and -825, and 47 U.S.C. §252, Complainant/Petitioner BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T South Carolina (“AT&T South Carolina”) respectfully requests that the Public Service Commission of South Carolina (“the Commission”) convene a docket for the purposes of: resolving billing disputes between Defendant/Respondent Tennessee Telephone Service, Inc. d/b/a Freedom Communications USA, LLC (“Freedom”) and AT&T South Carolina; determining the amount Freedom owes AT&T South Carolina under the parties’ interconnection agreement(s);<sup>1</sup> and requiring Freedom to pay that amount to AT&T South Carolina.<sup>2</sup>

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<sup>1</sup> In September 2009, AT&T South Carolina began applying a new methodology for calculating the resale promotional credits it will provide Freedom and other CLECs with regard to the cashback component of certain retail promotional offerings. *AT&T South Carolina is not seeking any amounts billed under this new methodology in this Docket.*

<sup>2</sup> AT&T South Carolina is filing similar Complaints and Petitions against five other competitive local exchange carriers with the Commission. Because of the commonality of the issues set forth in Section IV. of this Complaint and Petition with the issues set forth in Section IV. of those other five Complaints and Petitions, AT&T South Carolina intends to file a motion to consolidate these six dockets for the purposes of resolving those common issues. AT&T South Carolina will file that motion in each of these dockets after the Commission assigns them docket numbers.

## **I. BACKGROUND AND SUMMARY OF COMPLAINT AND PETITION**

Freedom owes AT&T South Carolina a past-due and unpaid balance for telecommunications services AT&T South Carolina provided it for resale under the terms and conditions of applicable interconnection agreement(s). As of November 9, 2009, this past-due and unpaid balance totals, in the aggregate, more than \$83,000 in the State of South Carolina.<sup>3</sup> To the extent that Freedom has disputed AT&T South Carolina's bills, AT&T South Carolina has denied those disputes as required by its interconnection agreement(s) with Freedom. Freedom, however, has declined to pay AT&T South Carolina the amounts associated with these denied disputes. A substantial amount of this past-due and unpaid balance is the result of Freedom's withholding payments to AT&T South Carolina for one or both of the following reasons:<sup>4</sup> (1) Freedom erroneously asserts that AT&T South Carolina cannot apply the resale discount approved by this Commission to the cashback component of various promotional offers that AT&T South Carolina makes available for resale;<sup>5</sup> and (2) Freedom erroneously asserts that AT&T

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<sup>3</sup> As of November 9, 2009, Freedom's unpaid and past-due balance is over \$900,000 across the nine southeastern states that comprised the former BellSouth's ILEC operating territory.

<sup>4</sup> A more detailed description of Freedom's assertions, and a brief explanation of why they are erroneous, is set forth in Section IV. below.

<sup>5</sup> For one-time "cash back" promotions, AT&T contends that resellers should receive less than the face amount of the promotion minus the wholesale discount because such valuation does not reflect the true economic value of the promotion on retail rates. Among other things, it does not consider the redemption rate, the in-serve life of the subject customer, or the net present value of a one-time upfront payment associated with the promotion. Recently, AT&T implemented a new methodology aimed at providing the true economic value of the promotion to resellers. Several resellers are challenging the methodology in other proceedings; but that issue is not before the Commission in this docket because AT&T South Carolina is not seeking any amounts billed under this new methodology in this docket.

South Carolina's customer referral marketing promotions (such as the "word-of-mouth" promotion) are subject to resale.

The interconnection agreement(s) between AT&T South Carolina and Freedom provide that disputes like these are to be resolved in the first instance by this Commission. AT&T South Carolina, therefore, respectfully requests that the Commission resolve the outstanding disputes, determine the amount that Freedom owes AT&T South Carolina under the parties' interconnection agreement(s), and require Freedom to pay that amount to AT&T South Carolina.

## **II. PARTIES**

1. AT&T South Carolina is a corporation organized under the laws of the state of Georgia. AT&T South Carolina is an incumbent local exchange carrier ("ILEC") as that term is defined by both federal<sup>6</sup> and state<sup>7</sup> law, and it is a "telephone utility" as that term is defined by state law.<sup>8</sup>

2. The full name and address of the authorized representative for AT&T South Carolina in this proceeding is:

Patrick W. Turner  
1600 Williams Street, Suite 5200  
Columbia, SC 29201  
(803) 401-2900  
pt1285@att.com

3. Freedom is organized under the laws of the state of Tennessee. Freedom is a "telephone utility" as that term is defined by state law, and it is authorized to provide resold local exchange telecommunications services within the State of South Carolina.

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<sup>6</sup> See, e.g., 47 U.S.C. §251(h)(1).

<sup>7</sup> See S.C. Code Ann. §58-9-10(11).

<sup>8</sup> See *Id.*, §58-9-10(6).

### **III. FREEDOM'S BREACH OF ITS INTERCONNECTION AGREEMENT(S)**

4. In 2002, AT&T South Carolina and Freedom entered into a negotiated interconnection agreement (the "Freedom 2002 agreement") in which AT&T South Carolina agreed, among other things, to offer various telecommunications services for resale to Freedom at specified wholesale rates and subject to specified terms and conditions. A copy of the Freedom 2002 agreement is on a CD attached hereto as Exhibit A.<sup>9</sup>

5. In 2004, AT&T South Carolina and Freedom entered into a negotiated interconnection agreement (the "Freedom 2004 agreement") in which AT&T South Carolina agreed, among other things, to offer various telecommunications services for resale to Freedom at specified wholesale rates and subject to specified terms and conditions. A copy of the Freedom 2004 agreement is on a CD attached hereto as Exhibit A.<sup>10</sup>

6. In March 2005, AT&T South Carolina and Freedom entered into a negotiated interconnection agreement (the "Freedom March 2005 agreement") in which AT&T South Carolina agreed, among other things, to offer various telecommunications services for resale to Freedom at specified wholesale rates and subject to specified terms and conditions. A copy of the Freedom March 2005 agreement is on a CD attached hereto as Exhibit A.

7. In October 2005, AT&T South Carolina and Freedom entered into a negotiated interconnection agreement (the "Freedom October 2005 agreement") in which

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<sup>9</sup> AT&T will make copies of this CD available to the parties upon request.

<sup>10</sup> Specifically, High Tech adopted the interconnection agreement of another carrier in accordance with federal law. Both the adoption agreement and the adopted interconnection agreement are included in Exhibit A.

AT&T South Carolina agreed, among other things, to offer various telecommunications services for resale to Freedom at specified wholesale rates and subject to specified terms and conditions. A copy of the Freedom October 2005 agreement is on a CD attached hereto as Exhibit A.

8. As of November 9, 2009, Freedom owes a past due and unpaid balance to AT&T South Carolina in the amount of \$83,372.78 (the "Past Due Balance"). The Past Due Balance represents the amounts AT&T South Carolina billed Freedom for telecommunications services provided to Freedom in South Carolina pursuant to the parties' interconnection agreement(s) less: payments made by Freedom; and credits provided by AT&T South Carolina to Freedom in connection with valid disputes and approved promotional credit requests submitted by Freedom as of November 9, 2009.

9. The Past Due Balance does not include any amounts related to disputes or promotional credit requests submitted by Freedom, but not yet reviewed by AT&T South Carolina.

10. To the extent that the Past Due Balance includes any charges on AT&T South Carolina's invoices that Freedom has disputed, AT&T South Carolina has denied those disputes as required by its interconnection agreement(s) with Freedom.

11. Freedom has breached the Freedom 2002 agreement, the Freedom 2004 Agreement, the Freedom March 2005 agreement, and/or the Freedom October 2005 agreement by refusing to pay amounts that are due and owing to AT&T under those agreements.

#### **IV. FREEDOM'S ERRONEOUS REASONS FOR NONPAYMENT**

12. As noted above, a substantial amount of Freedom's unpaid balance is the result of Freedom's withholding payments to AT&T South Carolina for one or both of the following reasons.

**A. Application of the resale discount to the "cashback" component of promotional offerings.**

13. Freedom asserts that AT&T South Carolina cannot apply the resale discount approved by this Commission to the cashback component of various promotional offerings that AT&T South Carolina makes available for resale. Assume, for example, AT&T South Carolina's retail promotional offering provides a retail customer who purchases Telecommunications Service A under certain conditions a coupon that can be redeemed for a \$50 check. When Freedom resells that promotional offering to qualifying end users and submits to AT&T South Carolina an appropriate promotional credit request, AT&T South Carolina provides Freedom a bill credit of \$42.60 (\$50 less the 14.8% resale discount established by this Commission). Freedom, however, erroneously contends that it is entitled to a bill credit for the full \$50 "face value" of the cashback amount.

14. There is no basis in logic or law for Freedom's assertions. If AT&T South Carolina were to reduce the retail price of a telecommunications service by \$50 in a given month (say from \$200 to \$150), Freedom would not receive the full \$50 "face value" of the reduction when it purchased that service for resale. Instead, Freedom would receive a \$42.60 reduction – the \$50 face value of the reduction less the 14.8% avoided cost

discount established by the Commission.<sup>11</sup> Freedom clearly should not receive a greater wholesale reduction merely because the retail reduction takes the form of a “cashback” offer rather than a price reduction.

15. The federal Act expressly contemplates that when an incumbent LEC resells services under §251(c)(4), “a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.” 47 U.S.C. § 252(c)(3). Using this “costs avoided” standard, this Commission determined a state-wide percentage discount from the retail rate that is used to determine the wholesale rate at which the incumbent LEC, such as AT&T South Carolina, is to sell its services to CLECs for resale. Far from being inappropriate, subtracting the wholesale discount from the face value of the promotion is exactly what is contemplated by the federal Act.

**B. Customer Referral Marketing Promotions.**

16. Freedom asserts that AT&T South Carolina’s customer referral marketing promotions (such as the “word-of-mouth” promotion) are subject to resale. Assume, for example, that AT&T gives retail customers who qualify a \$50 bill credit when they refer others who purchase AT&T services. Freedom contends that it is entitled to resell this

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<sup>11</sup> When the retail price of the service was \$200, Freedom paid AT&T South Carolina \$170.40 (\$200 less the 14.8% resale discount) when it purchased the service for resale. When the retail price of the service is reduced to \$150, Freedom pays AT&T South Carolina \$127.80 (\$150 less the 14.8% resale discount) when it purchases the service for resale. In other words, a \$50 reduction in the retail price of the service results in a \$42.60 reduction in the price Freedom pays for the service (from \$170.40 to \$127.80), which is the \$50 “face value” of the reduction less the 14.8% resale discount.



customer referral marketing promotion and that it therefore is entitled to a \$50 bill credit when one of Freedom's end users refers others who purchase services from Freedom.

17. Subject to certain conditions and limitations, AT&T South Carolina is required "to offer for resale at wholesale rates any *telecommunications service* that [it] provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C. §251(c)(4)(A)(emphasis added). Customer referral marketing promotions, however, are not telecommunications services that are subject to resale obligations. An end user does not receive any benefit under these promotions for purchasing telecommunications services from AT&T South Carolina. Instead, an end user receives benefits under these promotions only if he or she successfully markets AT&T South Carolina's services to others who then purchase services from AT&T South Carolina. Freedom obviously is free to give similar benefits to its end users who successfully market its services to others, but it is not entitled to have AT&T South Carolina finance any such marketing programs that Freedom may employ.

18. The federal Act makes it clear that CLECs must finance their own marketing programs when it directs State commissions to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, *excluding the portion thereof attributable to any marketing . . . costs that will be avoided by the local exchange carrier.*" 47 U.S.C. §252(d)(3). Accordingly, the resale discount rate that this Commission established (and that is incorporated in the Freedom 2002 agreement, the Freedom 2004 Agreement, the Freedom March 2005 agreement, and the Freedom October 2005 agreement) already excludes the costs of customer referral marketing promotions like the "word of mouth" promotion. To go

further and also require AT&T South Carolina to give Freedom additional promotional credits for these customer referral marketing promotions would impermissibly force AT&T South Carolina to double-count its marketing expenses -- first in the wholesale rate, and again in the promotional credit.

## V. JURISDICTION

19. The Commission has jurisdiction to interpret and enforce the terms of the interconnection agreement(s) at issue in this docket. The 1996 Act expressly authorizes state commissions to mediate interconnection agreement negotiations,<sup>12</sup> arbitrate interconnection agreements,<sup>13</sup> and approve or reject interconnection agreements.<sup>14</sup> In addition, the courts have held that section 252 implicitly authorizes state commissions to interpret and enforce the interconnection agreements they approve.<sup>15</sup>

## VI. REQUEST FOR RELIEF

WHEREFORE, AT&T South Carolina respectfully requests that the Commission:

- (1) Serve a copy of this Complaint and Petition upon Freedom pursuant to S.C. Code Ann. §58-9-1090 and require Freedom to answer the Complaint and Petition;
- (2) Find that Freedom has breached the Freedom 2002 agreement, the Freedom 2004 Agreement, the Freedom March 2005 agreement, and/or the Freedom

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<sup>12</sup> 47 U.S.C. § 252(a)(2)

<sup>13</sup> *Id.* § 252(b)

<sup>14</sup> *Id.* § 252(e)

<sup>15</sup> See, e.g., *Bell Atl. Md., Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279, 304 (4th Cir. 2001) (“The critical question is not whether State commissions have authority to interpret and enforce interconnection agreements – we believe they do”), *vacated on other grounds in Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 65 (2002). See also *Core Commc’ns v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 342 n.7 (3rd Cir. 2007) (“[E]very federal appellate court to consider the issue has determined or assumed that state commissions have authority to hear interpretation and enforcement actions regarding approved interconnection agreements”)

October 2005 agreement by wrongfully withholding amounts due and payable to AT&T South Carolina for services provided in accordance with the parties' interconnection agreement(s);

(3) Find that AT&T South Carolina has been financially harmed as a direct result of Freedom's breach;

(4) Find that Freedom is liable to AT&T South Carolina for all amounts wrongfully withheld by it, including without limitation late payment charges and interest;

(5) Require Freedom to pay AT&T South Carolina all amounts wrongfully withheld by it, including without limitation late payment charges and interest; and

(6) Grant AT&T South Carolina such additional relief as the Commission may deem just and proper.

Respectfully submitted this 6<sup>th</sup> day of January, 2010.

BELLSOUTH TELECOMMUNICATIONS, INC.  
d/b/a AT&T SOUTHEAST d/b/a AT&T SOUTH  
CAROLINA



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Suite 5200  
Columbia, South Carolina 29201  
(803) 401-2900

STATE OF SOUTH CAROLINA                    )  
  )  
COUNTY OF RICHLAND                    )        CERTIFICATE OF SERVICE

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T South Carolina ("AT&T") and that she has caused AT&T South Carolina's Complaint and Petition for Relief to be served upon the following on January 6, 2010:

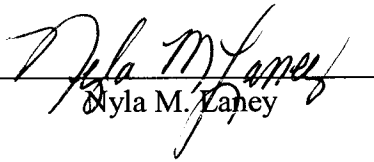
Registered Agent for: Tennessee Telephone Service, LLC  
d/b/a Freedom Communications USA, LLC  
B. Allston More, Jr.  
5 Exchange Street  
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